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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1928

No. 491

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.,

Appellant,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, SARAH JANE BROOKE, AND JOHN ARTHUR BROOKE,

Appellees.

BRIEF FOR APPELLEES

I

REFERENCE TO THE OPINION OF THE SUPREME COURT OF THE STATE OF CALIFORNIA

The decision of the Supreme Court of the State of California, now on appeal before this court, will be found by this court on pages 106 to 109, inclusive, in the printed transcript of record. This opinion, though not yet printed in the official California Reports, may be found in printed form in the Advance Sheets of the California Decisions, volume 75, page 481.

II

STATEMENT OF THE CASE

1. The Facts.

The Morris Pleasure Fishing, Inc., is a corporation whose business is that of maintaining and operating a small fleet of fishing vessels for the accommodation of the general public seeking recreation in deep sea fishing.

Its headquarters is at the city of Santa Monica Municipal Pier (R. 39), which is fifteen or sixteen hundred feet long (R. 48). In the fishing seasons, its practice has been to send these small fishing vessels out from Santa Monica Pier to the fishing grounds in *Santa Monica Bay,* carrying passengers who desire to fish at fixed charges for half-day and full-day trips. For use in this business, this corporation on and prior to April 8, 1926, had six vessels (R. 39). On April 8, 1926, there were "four in operation, two laid up" (R. 42). The four in operation ranged from four to fourteen tons registry (R. 43). Each boat is captained by a licensed boat operator or skipper, who is assisted by a crew of one or more employees (R. 30, 40). The business is confined entirely to the maintenance and operation of these pleasure fishing vessels and transportation of patrons desiring to fish in the waters of Santa Monica Bay, except that the corporation would supply these patrons with bait.

These vessels, equipped with gas engines (R. 43), were capable of cruising a distance of five hundred

miles (R. 44), but none ever did. **THESE VESSELS PRIOR TO APRIL 8, 1926, NEVER LEFT THE WATERS OF SANTA MONICA BAY ON THESE FISHING TRIPS (R. 43).**

Santa Monica Bay is described by witness Captain Cliff A. Morris (R. 43) as follows:

> "Q. Where did they usually go to fish?
>
> A. In Santa Monica Bay, as they call it. It is a bay inside of a line drawn between Point Firmin and Point Duma.
>
> Q. About how far from shore?
>
> A. About ten miles, approximately, from the Santa Monica Pier.
>
> Q. Did they ever make any exception to the place where they went fishing? Just describe it yourself.
>
> A. When they land at San Pedro, they went outside, up Santa Monica Bay, for repairs, *but they never run outside.* They have *since,* our boats, this summer, have gone outside ten miles, ten miles, *but not then.*" (Italics ours.)

These fishing vessels leave Santa Monica Pier with patrons on board, going out to fishing grounds two and one-half or three miles (R. 39), but not more than five miles (R. 43) except that "sometimes they go over to what they call 'the rock-cod bank,' about ten miles straight out." (R. 39.)

The only time, apparently, these vessels ever leave Santa Monica Bay is when they go to San Pedro, thirty miles around the shore, *for repairs* (R. 43).

These vessels were used exclusively for carrying patrons desiring to do deep sea fishing (R. 43). This

corporation did not use these vessels for commercial fishing for its own benefit (R. 41, 43) ; the fish caught belonged to the patrons (R. 40).

As a necessary incident to the operation of these vessels the company employed seamen to navigate the vessels.

John James Uttley Brooke, an unmarried minor, eighteen years of age, on and prior to April 8, 1926, was employed by this corporation as an apprentice navigator and seaman (R. 28, 30). He had applied for a license as a navigator or skipper or boat operator, but could not get one (R. 30).

Leland Gregory, married, and the father of two minor children (R. 35, 37), was employed by this corporation as a boat operator or master of a boat (R. 44) on and prior to April 8, 1926. Captain Stanton Morris was the official in charge of this business (R. 48) and the immediate superior of Brooke (R. 48) and Gregory.

On April 8, 1926, the sea was rough and none of these boats could be operated that day (R. 43, 40). One of these vessels, the "W. K.," was moored, with no one aboard (R. 45, 40), in Santa Monica Bay, about one-half to three-quarters of a mile from the pier (R. 47). In the storm, this vessel, with no one aboard, broke loose from her moorings early in the afternoon and began to drift toward the shore (R. 45). At the time, a group of these employees were gathered on the pier (R. 47). Captain Morris arrived on the scene and said to these employees

(including Gregory and Brooke), "Come on boys, let us save it" (R. 48). Captain Morris, Brooke and Gregory got into an eighteen-foot skiff lying at the wharf and started out toward the drifting vessel. When they were about fifty feet from the vessel "W. K.," their skiff overturned and all three were drowned (R. 47).

Appellant, London Guarantee and Accident Co., Limited, had issued a standard workmen's compensation insurance policy to the employer corporation, Morris Pleasure Fishing, Inc., covering its liability to pay compensation to injured employees of said corporation where such employees suffered industrial injury or death arising out of or in the course of that employment.

2. Two Awards Made by the Industrial Accident Commission

Thereafter, the mother and stepfather of Brooke filed an application or claim for a death benefit with the California Industrial Accident Commission. Likewise, the widow and minor children of Gregory filed another application or claim for death benefit with the Industrial Accident Commission. Hearings were held in the two proceedings, which by stipulation were considered together.

No dependency being shown by the mother and stepfather of Brooke, they were denied a death benefit but were awarded the sum of one hundred fifty dollars on account of burial expense, pursuant to the provisions of section 9 (*c*) 3, which provides:

"If the deceased employee leaves no person dependent upon him for support, the employer shall be liable for the reasonable expenses of his burial, not exceeding one hundred fifty dollars and such other benefit as may be provided by law."

In the *Gregory* case, the widow and minor children of the deceased employee Gregory were found to be wholly dependent and were awarded a death benefit of five thousand dollars, based on maximum annual earnings, in addition to funeral expenses in the sum of one hundred fifty dollars, a total of five thousand one hundred fifty dollars, pursuant to the provisions of section 9 (*c*) 1, which provides:

"In case the deceased employee leaves a person or persons wholly dependent upon him for support, such dependents shall be allowed the reasonable expenses of his burial, not exceeding one hundred fifty dollars, and a death benefit, which shall be a sum sufficient, when added to the disability indemnity which at the time of his death has accrued and become payable, under the provisions of subsection (*b*) hereto, to make the total disability indemnity and death benefit equal to three times his average annual earnings, such average annual earnings to be taken at not less than three hundred thirty-three dollars and thirty-three cents nor more than one thousand six hundred sixty-six dollars and sixty-six cents."

The award made by the California Industrial Accident Commission in the *Gregory* case has never been appealed, but, by stipulation of all parties, is depend-

ent upon the appeal now before this court. The decision of this court, therefore, in the case at bar will determine whether or not the widow and minor children of Leland Gregory are to receive this award of five thousand one hundred fifty dollars.

These two awards were made under the authority of the provisions of the Workmen's Compensation, Insurance and Safety Act of 1917 (chapter 586 of the California Statutes of 1917, as amended), and particularly under the authority of sections 9 (*c*) 1, 9 (*c*) 3 (above quoted), and section 6 (*a*) of that act. Section 6 (*a*) provides:

> "Sec. 6. (*a*) Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:
>
> (1) Where, at the time of the injury, both the employer and employee are subject to the compensation provisions of this act.
>
> (2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment.
>
> (3) Where the injury is proximately caused by the employment, either with or without negligence, and is not caused by the intoxication of the injured employee, or is not intentionally self-inflicted."

III

SUMMARY OF CONTENTIONS AND ARGUMENT

A

Appellant's Contentions Summarized

Appellant founds this appeal upon an assignment of ten errors, summarized as follows:

(1) The CONTRACT of employment was MARITIME.

(2) The EMPLOYMENT was MARITIME.

(3) The employees' SERVICES were MARITIME.

(4) The INJURY to employees was MARITIME.

(5) The employer's BUSINESS was MARITIME.

(6) The STATE STATUTE (Compensation Act) may not be applied and the benefits therein given furnished the dependents of Brooke and Gregory, the deceased employees.

(7) ALL matters (including the rights and liabilities of employee, employer and employer's insurance carrier) were *exclusively* within the jurisdiction of the admiralty courts.

(8) The application of a state statute (the Compensation Act) violates section 2 of article III of the federal constitution.

(9) The jurisdiction of a STATE COURT (California Industrial Accident Commission) contravenes the *exclusive* jurisdiction of the admiralty courts in the case at bar.

(10) The AWARD of the California Commission contravenes the *exclusive* jurisdiction of the admiralty courts.

SUMMARIZED to the last analysis, appellant's contention is that the admiralty courts had *exclusive* jurisdiction because the contract was maritime, the employment was maritime, the services were maritime, the business was maritime and the casualty occurred upon navigable waters.

Noticeable by their absence among appellant's contentions are:

(1) Brooke's injury constituted a maritime tort;

(2) That the maritime law furnished any remedy specifically:

(a) Wages, maintenance and cure under the rule of *The Osceola*, 189 U. S. 158, in disability (not death) cases;

(b) Suit for damages;

(3) That the transportation of fishing patrons exclusively on the waters of Santa Monica Bay was interstate or foreign commerce.

(4) That article I, section 8, subdivision 3 of the federal constitution was violated.

B

Summary of Argument

REASONS WHY THE DECISION OF THE SUPREME COURT OF THE STATE OF CALIFORNIA SHOULD BE AFFIRMED

A. The Controlling Principle Already Enunciated.

B. The Local Law May Govern With the Vessel in Its Home Port.

C. Why the *Jensen* Case Does Not Control.

D. The Effect of the Commerce Clause of the Constitution.

E. The Maritime Law Enlarged.

F. The New Principle of the *Strand* Case.

G. The Merchant Marine Act.

H. Admiralty Jurisdiction of Causes of Action.

a. Action *not* founded on maritime tort.
b. No tort proven.
c. No "maritime" tort.
d. Action founded on compensation statute.
e. Action on insurance contract.
f. Enforcement of state statute and insurance contract does not violate exclusive admiralty jurisdiction.

IV

ARGUMENT

Reasons Why the Decision of the Supreme Court of the State of California Should Be Affirmed

The BUSINESS of the employer was entirely INTRASTATE and the WORK of the deceased employees, Brooke and Gregory, was entirely LOCAL in character. There was no commerce or navigation of INTERSTATE or FOREIGN character, no port to port transportation, in fact, no departure from the one port of Santa Monica.

No rights and liabilities of persons engaged in interstate or foreign trade are here involved. The cause of action is nonmaritime.

The maritime law furnishes no remedy upon the facts found in the case at bar.

ONE FACT, the use of navigable waters in the employer's business, permits the admiralty court to assert jurisdiction IN GENERAL MARITIME cases. Opposing facts, the LOCAL character of the business and the nonmaritime character of the CAUSE OF ACTION, deprive the jurisdiction of the admiralty courts of its EXCLUSIVENESS.

A

The Controlling Principle Already Enunciated By This Court

The rule now is that the application of state workmen's compensation acts to maritime injuries or to injuries occurring upon navigable waters is forbidden only where the application of that statute would interfere with the characteristic harmony and uniformity of the maritime law in its interstate and international aspects.

> "It is now established that it is not merely the uniformity of the general maritime law which is essential but the uniformity of the general maritime law *in its interstate and international aspect* and that maritime injuries of a local significance may still be governed by the State Compensation Act." (Italics ours.)
>
> *Grant Smith-Porter Ship Co.* vs. *Rohde*, 257 U. S. 469.

And again:

> "*Under such circumstances* regulation of

rights, obligations, and consequent liabilities of the parties, as between themselves, by a local rule, *would not necessarily work material prejudice to any characteristic feature of the general maritime law, or interfere with the proper harmony or uniformity of that law in* ITS INTERNATIONAL OR INTERSTATE RELATIONS." (Italics and capitalization ours.)

Grant Smith-Porter Ship Co. vs. *Rohde*, 257 U. S. 469.

This rule has been adhered to by this court in the following line of decisions:

Miller's Ind. Underwriters vs. *Braud*, 46 Sup Ct. 194;

Rosengrant vs. *Havard*, 47 Sup. Ct. 454;

Alaska Packers Assn. vs. *Industrial Acc. Com.*, 48 Sup. Ct. 346;

Sultan Ry. Timber Co. vs. *Dept. of Labor, etc.*, 48 Sup. Ct. 505.

Eclipse Mill Co. vs. *Dept. of Labor, etc.*, 48 Sup. Ct. 505.

In the joint opinion on the last two cited cases this court said:

"It is settled by our decisions that, where the employment, although maritime in character, pertains to local matters, having only an incidental relation to navigation and commerce, the rights, obligations, and liabilities of the parties, as between themselves, may be regulated by local rules which do not work material prejudice to the characteristic features of the general maritime law or interfere with its uniformity * * *."

In the same two cases, Mr. Justice Brandeis, in his concurring opinion, also says:

> "* * * but in both the controlling principle is well settled, and *the question presented* is simply whether on the principal facts it is applicable * * *." (Italics ours.)

Under the facts found in the case at bar, even if this court, after consideration of our argument to the contrary, as hereinafter set forth, should hold that the admiralty courts did have jurisdiction, then, and in that event, the foregoing stated principle would still permit the assertion of jurisdiction by the Industrial Accident Commission of the State of California and the application of the provisions of the Workmen's Compensation Act of that state to the rights and liabilities of the parties to this proceeding. This principle is alone decisive of the question presented in this proceeding.

Petitioner's differentiation between seamen and other maritime workers engaged in work of a local character and argument that the rule of the *Rohde* case does not apply because Brooke was a seaman fails when this court's decision in *Alaska Packers Assn.* vs. *Industrial Acc. Com.*, 48 Sup. Ct. 346, is called to mind. In that case, Peterson's contract of employment called for services as a seaman or fisherman. At the moment of his injury he was shoving his fishing boat off the beach, a fishing boat which he had navigated and which was capable of being used on a several days' cruise. This court held that such

service of a *seaman* was not "so directly connected with navigation and commerce that to permit the rights of the parties to be controlled by the local law would interfere with the *essential* uniformity of the general maritime law."

B

The Local Law May Govern With the Vessel in Its Home Port

The facts in the case at bar disclose that neither of the deceased employees, Brooke or Gregory, were even members of the crew of the drifting vessel "W. K.," which, together with the other three vessels, in condition to be operated, NEVER LEFT THE PORT OF SANTA MONICA in the course of the business of the employer.

With a vessel in its home port, it is the policy of the general maritime law to allow matters concerning it to be governed by the local law. *The maritime law is more largely interested in vessels to the extent that they are participating in interstate or foreign commerce or are voyaging.* It surrenders to the domestic law all regulation of matters concerned purely with the domestic or internal affairs of the vessel, and *the civil rights and duties* of its owner in his relation to individuals in the state of his own domicile.

The General Smith, 4 Wheat. 438;
The Lottawana, 21 Wall. (88 U. S.) 558.

These vessels were in their home port.

Application of the provisions of the Compensation

Act of California to the rights of these employees and the liabilities of this employer and to the contractual liabilities of the insurance carrier, appellant herein, under the circumstances found in the case at bar, has always been permitted by the admiralty courts.

C

Why the Jensen Decision Does Not Control

Appellant's argument, in substance, is based upon the decision of this court in the *Jensen* case, *Southern Pacific Co.* vs. *Jensen*, 244 U. S. 645, as followed by other decisions of this court in

Clyde S. S. Co. vs. *Walker*, 244 U. S. 255;
Peters vs. *Veasey*, 251 U. S. 121;
The Chelentis vs. *Luckenbach S. S.* Co., 247 U. S. 372;
Knickerbocker Ice Co. vs. *Stewart*, 253 U. S. 149;
Industrial Accident Com. vs. *James Rolph Co.*, 264 U. S. 219;
Robbins Drydock & Repair Co. vs. Dahl, 266 U. S. 449;
S. S. Bowdoin Co. vs. *Industrial Acc. Com.*, 246 U. S. 648.

As stated by this court in the *Jensen* case, *supra:*

"And plainly, we think no such *legislation* is valid if it contravenes the essential purpose expressed by an act of congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its *international and interstate* relations. If New York

can subject *foreign ships* coming into her ports to such obligations as those imposed by her compensation statute, other states may do likewise. The necessary consequences would be destruction of the very uniformity in respect to maritime matters which the constitution was designed to establish; and freedom of *navigation between the states* and with *foreign countries* would be *seriously hampered and impeded.*" (Italics ours.)

It clearly appears in the *Jensen* case that Jensen, working as a stevedore, was unloading A SHIP ENGAGED IN INTERSTATE AND FOREIGN COMMERCE. There was, therefore, a direct relation between Jensen's services and that class of commerce. Distinctively, in the case at bar, the ship was *not* engaged in interstate or foreign commerce.

Likewise, WITHOUT EXCEPTION, in every case cited by petitioner as adopting the rule in the *Jensen* case, the ship upon which the injury occurred was ENGAGED IN INTERSTATE OR FOREIGN TRADE.

By contrast, WITHOUT EXCEPTION, in every case following the rule in the *Rohde* case, the ship was NOT ENGAGED in interstate or foreign commerce.

This basic differentiation goes on *beyond mere coincidence* and must indicate the foundation of the distinction between *local* maritime matters under the state courts' concurrent jurisdiction and *purely* maritime matters under the admiralty courts' exclusive jurisdiction.

In *Clyde S. S. Co.* vs. *Walker,* 244 U. S. 255, Walker, a stevedore, was injured while unloading the Steamer "Cherokee," just arrived in New York Harbor from North Carolina.

In *S. S. Bowdoin Co.* vs. *Industrial Acc. Com.,* 246 U. S. 648, Sievers, a seaman, was injured on the deck of the Steamer "Bowdoin" at Port of Eureka, California. The steamer "Bowdoin" was engaged in interstate trade.

In *Peters* vs. *Veasey,* 251 U. S. 121, Veasey was injured while working as a stevedore unloading a cargo from the Steamer "Seria" at a dock in New Orleans. This vessel was "in trade."

In *Knickerbocker Ice Co.* vs. *Stewart,* 253 U. S. 149, Stewart was drowned when he fell from a barge. The only question was the effect of an act of congress amending sections 24 and 256 of the Judicial Code, approved October 6, 1917, C. 97, 40 Stat. 395. Unfortunately, it was stipulated that the employment was maritime.

> "* * * injuries received by one Stewart while engaged in helping unrig a derrick on one of the defendant's barges. *It is conceded* that the work in which the injured man was engaged was of a maritime nature and *upon that conceded fact* the argument is made. * * *" (Italics ours.)
>
> *Knickerbocker Ice Co.* vs. *Stewart,* 226 N. Y. 302, 303.

In both *Washington* vs. *Dawson & Co.* and *Industrial Acc. Com.* vs. *James Rolph Co.,* decided by this

court with joint opinion, 264 U. S. 219, this court affirmed its ruling in *Knickerbocker Ice Co.* vs. *Stewart, supra,* to the effect that that particular congressional act was unconstitutional. In both of these cases, however, the vessels were engaged in interstate trade and the question presented involved the services of stevedores in unloading the cargo from these ships.

In *T. Smith & Son* vs. *Taylor,* 276 U. S. 179, Taylor was injured on the dock in New Orleans and the compensation law of Louisiana was applied following the rule in the *Nordenholt* case. He was not injured on navigable waters.

Northern Coal & Dock Co. vs. *Strand,* 49 Sup. Ct. 88, the last case cited by appellant, will be more fully discussed hereafter.

In the case at bar, the vessels of the employer NEVER had engaged in interstate or foreign commerce or in port to port commerce. Stevedores were never required to work unloading the cargo of these vessels, for these vessels were not engaged in trade. The commerce in which the vessels in the case at bar were engaged was purely a local, intrastate, domestic commerce LOCAL to the city of Santa Monica. *It was not hooked to the terminal end of nor an integral part of any interstate or foreign commerce.*

The jurisdiction of the admiralty courts over maritime matters embraces many subjects.

> "*The principal subjects* of admiralty jurisdiction are maritime contracts and maritime torts,

including captures *jure belli,* and seizures on water for municipal and revenue forfeitures.

(1) Contracts, claims, or *service, purely maritime,* and touching rights and duties pertaining to commerce and navigation, are cognizable in the admiralty.

(2) Torts or injuries committed on navigable waters, of a civil nature, are also cognizable in the admiralty courts." (Italics ours.) *The Belfast,* 74 U. S. page 637.

The admiralty jurisdiction also extends to actions based upon violation of the old-time rules of the sea re passage, collision, salvage, pilotage and similar subjects.

It is pertinent to point out at this time that **NONE OF THE SUBJECTS** above enumerated are the basis of the cause of action in the case at bar.

Therefore, while the jurisdiction of the admiralty courts might be exclusive in its application to other subjects than the one involved in the case at bar, the peculiar nature of the present case, *i.e.,* its own facts and circumstances, do not invoke the exclusive jurisdiction of the admiralty courts.

D

Effect of the Commerce Clause of the Constitution

It is our contention that on *the facts* found herein, the admiralty courts had no jurisdiction of *the cause* tried in the courts below, notwithstanding Brooke was a seaman and his death occurred on navigable waters.

In conjunction with our argument supporting this contention, we ask this court to refer to Appendix "A," attached to this brief, for a better understanding of our concept of the meaning of the words "admiralty," "maritime," "commerce and navigation."

Federal *jurisdiction* over commerce and navigation rests upon two sources having one common authority:

1. The commerce clause of the federal constitution (article I, section 8, subdivision 3);

2. The jurisdiction of the federal courts in all cases of admiralty and maritime jurisdiction (article III, section 2);

The first source gives to *congress* the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

The second source in creating the *federal courts* and defining their judicial powers extends that judicial power "to all cases of admiralty and maritime jurisdiction."

Summed up, therefore, the control of the federal government over commerce and navigation is:

(1) The power of congress to regulate:
   a. interstate commerce, and
   b. foreign commerce.
   That power is cosqual over both forms of commerce.

(2) The jurisdiction of the federal courts over all cases of admiralty and maritime jurisdic-

tion. Not over "cases" of nonmaritime causes of action.

The exclusive jurisdiction of the admiralty courts in certain (admiralty and maritime) *cases* is exercised concurrently with the jurisdiction of the same courts as granted by congress (Judicial Code, sections 24 and 256) over all *civil causes* of admiralty and maritime jurisdiction.

> "The jurisdiction thus conferred embraces two classes of civil cases. The first respects acts and injuries done upon navigable waters. The second respects contracts purely maritime, and touching rights and duties pertaining to commerce and navigation."
>
> *Netherlands etc. Co.* vs. *Gallagher*, 282 Fed. 171, page 173.
>
> *The Belfast*, 74 U. S. 637.

Thus, the inherent power of the federal judiciary as granted it by the constitution (article III, section 2) over admiralty or maritime *cases* is strengthened, enlarged and rounded out by an act of congress functioning under its own constitutional grant of power. (Article I, section 8, subdivision 3.) The two grants of power, one constitutional, the other legislative, are exercised by the admiralty courts for a common purpose, *i.e.*, to secure, maintain and preserve uniformity in the regulation of interstate and foreign commerce and, thereby, harmony in that branch of our interstate and foreign relations. The two constitutional grants of power, one to the judiciary and the

other to congress, have thus merged in a common field and are to be viewed as each supplementing the other.

"The exclusive jurisdiction in admiralty cases was conferred on the national government as closely connected with the grant of the commercial power. It is a court instituted for the purpose of administering the law of the seas. There seems to be ground, therefore, for restraining its jurisdiction, in some measure, within the limit of the granting of the commercial power, which would confine it, *in cases of contracts*, to those concerning the navigation and trade of the country upon the high seas and tide waters within foreign countries and among the several states." (Italics ours.)

New Jersey Steam Nav. Co. vs. *Merchants Bank*, 6 Howard, 392.

E

The Maritime Law Enlarged

Congress gave to workers engaged in transportation by rail (*i.e.*, on land) of interstate and foreign commerce certain rights and causes of action. [Federal Employers' Liability Act of 1908, chapter 149, 35 Stat. 65, and chapter 143, 36 Stat. 291 (45 U. S. C. A. sections 51-59).]

These were greater rights than those rights of maritime workers engaged in interstate and foreign trade. The injustice and inequality of this situation was largely corrected by the Jones Act (Sec. 33 of the Merchant Marine Act, approved June 5, 1920, 41

Stat. 1007), which incorporated into the "maritime law" by reference those rights enjoyed by workers on interstate carriers by rail.

Engle vs. *Davenport*, 271 U. S. 33, 35;
Panama R. Co. vs. *Johnson*, 264 U. S. 375.

F

THE NEW PRINCIPLE OF THE STRAND CASE

The recent decision of this court in the *Strand* case establishes a new rule even while adopting and following the principle enunciated by this court in *Southern Pacific Co.* vs. *Jensen*, 244 U. S. 205.

Prior to the decision in the *Jensen* case, *supra*, this court had always held that the maritime law furnished no remedy in a death case and the state law might apply.

The Harrisburg, 119 U. S. 199;
The Alaska, 130 U. S. 201;
American S. B. Co. vs. *Chase*, 16 Wall. 522;
The Hamilton, 207 U. S. 398.

The Jones Act having given a remedy in cases of death of maritime workers, the admiralty courts now have EXCLUSIVE jurisdiction in such cases of death to maritime workers where the casualty occurred on navigable waters. That is the NEW PRINCIPLE evolved by this court on November 23, 1928, in

Northern Coal & Dock Co. vs. *Strand*, 49 Sup. Ct. 88.

In this case, a stevedore was killed on board the

vessel while unloading *a vessel which had brought coal from other lake ports.* This was port to port commerce; it was more, IT WAS INTERSTATE COMMERCE.

> " * * * The vessel in which he was working at the time of his death was the steamer Matthew Andrews, which had brought a carload of coal from Toledo, Ohio, to Superior by way of the Great Lakes * * *."
>
> *Northern Coal & Dock Co.* vs. *Industrial Com.*, 213 N. W. 658-9.

In the *Strand* case, *supra*, this court recognized the difference between internal or local or domestic or intrastate commerce under the jurisdiction of the state law administered *exclusively* by the state law as contradistinguished from foreign and interstate or (as called in admiralty) maritime commerce under the maritime law administered *exclusively* by the admiralty courts in two ways:

(a) Reference to the rule of the *Rohde* case, *Grant Smith-Porter Ship Co.* vs. *Rohde;*

(b) Reference to the rule of *Panama R. Co.* vs. *Johnson*, and *New York Cent. R. Co.* vs. *Winfield.*

Analyzing those references we find:

(a) This court said on page 89:

> " * * * We have also held that state statutes providing compensation for employees through commissions might be treated as amending or modifying the maritime law in cases where they concern purely local matters and occasion no

interference with the uniformity of *such law in its international and interstate relations. Grant Smith-Porter Ship Co.* vs. *Rohde,* 257 U. S. 469 * * *.

The unloading of a ship is not matter of purely local concern. *It has direct relation to commerce and navigation,* and uniform rules in respect thereto are essential * * *." (Italics ours.)

Why did not the rule in the *Rohde* case control on the facts found in the *Strand* case? The business was a land business; it was local in character; the contract of employment primarily was a nonmaritime contract.

It did not apply because:

1. The services being rendered by Strand at the time of his injury were a DIRECT PART OF INTERSTATE COMMERCE.

2. Strand in rendering those services was a seaman engaged in that commerce called "maritime."

3. As a seaman engaged in interstate commerce, the maritime law *furnished a remedy.*

(b) The court said, referring to the *Johnson* and *Winfield* cases, *supra,* on page 89:

"*New York Central R. Co.* vs. *Winfield,* 244 U. S. 147, 151, * * * considered the effect of the Federal Employers' Liability Act * * * upon the former right of employees to recover under the laws of the states. * * *

We held 'the act is comprehensive and also exclusive,' and denied the right of an employee *of an interstate carrier* to recover under a state

statute even in respect of injuries suffered without fault as to which the federal act provides no remedy.

Panama R. Co. vs. *Johnson*, 264 U. S. 375, ruled that section 20, Act of March 4, 1915, as amended by the Merchant Marine Act, incorporated the Federal Employers' Liability Act into the maritime law of the United States." (Italics ours.)

Why and how did the principles of these two cases give the admiralty court in the *Strand* case a jurisdiction exclusive of that of the state courts? Because:

1. Regulation of interstate commerce by congress is exclusive;

2. The Merchant Marine Act incorporated the Federal Employers' Liability Act into the maritime law, bringing with it *exclusive jurisdiction of cases directly involving interstate commerce.*

3. The maritime law thereby furnished a remedy in deaths on navigable waters of seamen and stevedores *engaged in interstate commerce.*

G

The Merchant Marine Act

(a) But the Merchant Marine Act did not bring into the maritime law any rules applicable to domestic or local or interstate commerce. Court jurisdiction over this class of commerce was never relinquished by the states to the federal government through the federal constitution.

"The completely internal commerce of a state, then, may be considered as reserved for the state itself."

Newport, etc., Bridge Co. vs. *U. S.*, 105 U. S. 492.

"The states have as full control over their purely internal commerce as congress has over commerce among the several states and with foreign nations."

Mobile County vs. *Kimball*, 102 U. S. 699.

"The internal commerce of a state—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the general government."

Sands vs. *Manistee River Imp. Co.*, 123 U. S. 295.

"All commercial action within the limits of a state, and which does not extend to any other state or foreign country, is exclusively under state legislation. Congress has no more power to control this than a state has to regulate commerce 'with foreign nations and among the several states.'"

Passenger Cases, 7 How. 400.

See also:

Western Union Tel. Co. vs. *Texas*, 105 U. S. 466;
Groves vs. *Slaughter*, 15 Pet. 505;
Passenger Cases, 7 How. 399;
State Freight Tax Case, 15 Wall. 277;
U. S. vs. *E. C. Knight Co.*, 156 U. S. 12.

"Business done within this state can not be

made to mean business done between that state and other states."

Pacific Express Co. vs. *Seibert*, 142 U. S. 350.

"The power of congress, however, over the subject does not extend further than the regulation of commerce with foreign nations and among the several states. Beyond these limits the states have not surrendered their power over the subject, and may exercise it independently of any control or interference of the general government."

Sinnot vs. *Davenport*, 22 How. 243.

"(Congress) has nothing to do with the purely internal commerce as is carried on between different parts of the same state, if its operations are confined exclusively to the jurisdiction and territory of that state, and do not affect other nations or states or the Indian tribes."

Lord vs. *Goodall, etc., Steamship Co.*, 102 U. S. 543.

See also:

Pensacola Tel. Co. vs. *West, etc., Tel. Co.*, 96 U. S. 22;

Covington, etc., Bridge Co. vs. *Kentucky*, 154 U. S. 210;

Trade Mark Cases, 100 U. S. 96;

Stoutenburgh vs. *Hennick*, 129 U. S. 150;

Veazie vs. *Moor*, 14 How. 573;

U. S. vs. *E. C. Knight Co.*, 156 U. S. 32.

(b) The Merchant Marine Act did not enlarge the maritime law so as to furnish a remedy in death cases of seamen engaged in a domestic or local enterprise.

Neither the decision of this court in the *Strand*

case, *supra*, so holds, nor does any other decision by this court of which we are aware so hold. Nevertheless, it is a vital question in the case at bar and a question that the Industrial Accident Commission of California, as well as other state commissions, is repeatedly confronted with.

It may be that the rule enunciated by this court in the *Rohde* case was intended to cover this kind of a situation, but, so far as can be ascertained from the language of this court in the *Rohde* case and its sequent line of decisions, this court did not *specifically* say so. The determination of that question by this court in a written opinion would be of immeasurable help to all commissions and lower courts as well as to the litigants and their attorneys in future cases involving this same situation.

Justices Stone, Holmes and Brandeis in their concurring opinion in the *Strand* case, *supra*, impliedly hold that "workmen," other than seamen, killed on navigable waters would not have a remedy in the admiralty courts even though rendering services in connection with interstate commerce. They do not cite, but must have had in mind, *Rosengrant* vs. *Havard*, 47 Sup. Ct. 454.

To sum up:

(1) Under the Federal Employers' Liability Act, interstate workers have a remedy only in the federal courts, while intrastate workers have none under that act, but do find a remedy in the state courts;

(2) Under the maritime law *in death cases*, sea-

men in interstate commerce have a remedy *only* in the admiralty courts.

Where is the remedy for those seamen killed while engaged in domestic or intrastate commerce?

(3) Workmen (not seamen) performing services incidental to interstate commerce have a remedy in the state courts. *Rosengrant* vs. *Havard, supra.*

(4) While workmen (not seamen) engaged in intrastate commerce have a remedy only in the state courts and none in the admiralty.

H

Jurisdiction of Causes of Action

The jurisdiction of the admiralty courts over "cases" or causes of action is confined to "cases of admiralty or maritime jurisdiction."

The *cause of action* in the case at bar is one over which admiralty has no jurisdiction because:

(a) It is not founded on a maritime tort;

(1) Appellant has not so claimed in his assignment of errors on appeal to this court;

(2) The Supreme Court of California so found (R. 109).

"• • • Cases are cited to the proposition that admiralty jurisdiction in tort matters depend upon locality but that proposition is not involved here. The case is not one of tort. *Tort is neither alleged nor suggested.* • • •" (Italics ours.)

Ketchikan L. & S. Co. vs. *Bishop,* 24 Fed. (2d) 63.

"The action was not brought to recover damages for a tort, but solely for compensation under our statute." (R. 109.)

(b) There was no "tort" proven, maritime or otherwise, only a "casualty" that happened to occur on navigable waters.

No wilful or negligent act of commission or omission was shown, claimed or proven.

(c) There was no "maritime" tort.

The services of Brooke were rendered pursuant to a contract of employment involving domestic or intrastate commerce only.

"But in cases of this character, the locality of the injury is not the sole and exclusive test; the services to be performed must also be of maritime nature."

Grant Smith-Porter Ship Co. vs. *Rohde; Rosengrant* vs. *Havard,* 47 Sup. Ct. 454.

"In the cause now under consideration, the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the State Compensation Act; but the matter is of mere local concern and its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law. The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist."

Miller's Ind. Underwriters vs. *Braud*, 257 U. S. 59.

(d) The *action* was founded on a compensation statute of California which regulated the rights of employees and the liability of employers, both being residents and citizens of the State of California.

"If the contract relates exclusively to the interior navigation and trade of a state, jurisdiction is disclaimed."

New Jersey Steam Nav. Co. vs. *Merchants Bank*, 6 How. 392.

"Where no remedy exists for an injury in the admiralty courts the fact that such courts exist and exercise jurisdiction in other causes of action leaves the state courts as free to exercise jurisdiction in respect to an injury not cognizable in the admiralty as if the admiralty courts were unknown to the constitution and had no existence in our jurisprudence."

American Steamboat Co. vs. *Chase*, 16 Wall. 530.

"The power of congress to regulate commerce is undoubtedly a beneficent one. The police laws of the state are equally so, and it is our duty to harmonize them."

Cook vs. *Marshall County*, 196 U. S. 273.

"The reserved power of the states to guard the health, morals, and safety of their people is more vital to the existence of society than their power in respect to trade and commerce having no possible connection with those subjects."

Bowman vs. *Chicago, etc., R. Co.*, 125 U. S. 524.

"In conferring upon congress the regulation of commerce, it was never intended to cut the

states off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in without constituting a regulation of it, within the meaning of the constitution."

Sherlock vs. *Alling*, 93 U. S. 99.

"* * * It may be said generally that the legislation of a state not directed against commerce or any of its regulations but relating to the rights and liabilities of citizens and only indirectly and remotely affecting the operations of commerce is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

Sherlock vs. *Alling*, 93 U. S. 103.

See also *Cooley* vs. *Port Wardens*, 12 How. 299, 320;

Pacific Mail S. S. Co. vs. *Joliffe*, 2 Wall. 450, 459;

Ex Parte McNeil, 13 Wall. 236, 241;

Wilson vs. *McNamee*, 102 U. S. 572;

Olson vs. *Smith*, 195 U. S. 332, 341;

Anderson vs. *Pacific Coast S. S. Co.*, 225 U. S. 187.

(e) Insurance is not commerce. Appellant was the insurance carrier of the employer. Its contract or policy of insurance through regulation by the Compensation Act of the State of California (section 30) necessarily contained a provision whereby appellant became "directly and primarily liable" to injured employees (seamen) of its insured if injured,

and to the dependents of these employees of its insured if such employees (including seamen) were killed in the course of their employment. This clause of the contract created a direct liability to the dependents of Brooke and Gregory when they were thus drowned in the course of their employment.

The dependents of both employees so killed filed their *action* with the Industrial Accident Commission of California and their claim against appellant *based on such contract* was established and a judgment or award thereon made in their favor.

It is from that award appellant seeks relief, i. e., relief from appellant's liability based on its own contract of insurance. In effect, therefore, in this appeal appellant contends that enforcement of the terms of that insurance contract by the state courts will violate the "exclusive" jurisdiction of the admiralty courts.

> "* * * Recovery in a state court upon an insurance policy upon the life of a seaman for death occurring on a ship on the high seas while in the performance of his duties would not, I suppose, be deemed to have that effect or be precluded by the admiralty law, even though some of the provisions of the policy were imposed by state statute."
>
> *Northern Coal & Dock Co.* vs. *Strand*, 49 Sup. Ct. 88, 90.

"The contention here is that, inasmuch as the contract was one for marine insurance, it was a matter of interstate commerce, and as such beyond the reach of state authority.

*** * * This proposition involves an erroneous conception of what constitutes interstate commerce. That the business of insurance does not generally appertain to such commerce has been settled since the case of *Paul vs. Virginia*, 8 Wall. 168."**

Hooper vs. *California*, 155 U. S. 653.

"If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states; and would exclude state control over many contracts purely domestic in their nature."

Hooper vs. *California*, 155 U. S. 655.

See also *Western Union Tel. Co.* vs. *James*, 162 U. S. 656.

(f) Enforcement of the state statute and the insurance contract by the State of California does not and can not:

(1) Conflict with any superior maritime law in death cases;

(2) Contravene any applicable act of congress;

(3) Disturb the uniformity of the maritime law;

(4) Interfere with the proper harmony of the maritime law in its international or interstate relations;

(5) Work prejudice to any characteristic feature of the maritime law.

It does furnish THE ONLY REMEDY under any law in any court to the dependents of the deceased employees, Brooke and Gregory.

V

ANSWERING APPELLANT'S ARGUMENT

Appellant has grouped its argument under five points which we answer in seriatim:

Point 1

Hereinabove, beginning on page 15, we have endeavored to show that the rule of the *Jensen* case does not control on the facts found in the case at bar.

Point 2

We submit that appellant has misconstrued our stated conception of the extent of admiralty jurisdiction as being limited to the scope of interstate and foreign commerce.

The jurisdiction of the admiralty courts fundamentally is a power to decide CASES. The admiralty courts do not have jurisdiction over maritime contracts, as such, but the courts' jurisdiction extends to CASES arising from or founded upon maritime contracts. Likewise the jurisdiction of the admiralty courts is not a jurisdiction of maritime torts but is a jurisdiction of CASES founded on maritime torts.

The jurisdiction of the admiralty courts is coequal in extent with the boundaries and application of the maritime law. The maritime law is the law of nations, intended to preserve harmony and uniform-

ity in commercial intercourse between nations. The maritime law as it stood at the time of its recognition by the federal constitution and adoption into the law of this country as administered by the admiralty courts constituted an unwritten code of the usages of the sea, particularly as to rules of passage, liability in the event of collision, salvage, pilotage and similar subjects. The maritime rules controlling these subjects were the foundation upon which the harmony and uniformity of commercial intercourse might be preserved.

In the case at bar the maritime law unquestionably reached to the vessels of the employer, appellant's insured, in their use of the navigable waters of Santa Monica Bay.

If the case now before this court were an action founded upon a collision between one of these vessels and other vessels, it would be subject to the maritime rules of the sea and the cause of action would lie exclusively within the jurisdiction of the admiralty court, but *that subject is not the subject* upon which the present case or cause of action is founded. The present cause of action is not based upon the contract of employment primarily, it is not based upon such contract at all but is predicated upon the *status* of employer and employee residents of this state.

Cudahy Packing Co. vs. *Parramore*, 263 U. S. 418;

North Alaska Salmon Co. vs. *Pillsbury*, 174 Cal. 1;

Quong Ham Wah vs. *Industrial Acc. Com.*, 184 Cal. 26;
Alaska Packers Assn. vs. *Industrial Acc. Com.*, 200 Cal. 579.

The present action is not founded on tort.

The parties to the present action were not performing services that had any incidental relation, let alone a direct contact, with interstate and foreign commerce.

Thus, while we concede that the admiralty court would have jurisdiction over the vessels of appellant's assured in the case at bar, over contracts made in connection therewith, the very torts committed thereby or thereon, over a collision occurring to and between such vessels and such other similar subjects, we respectfully maintain that *that jurisdiction of the admiralty courts is not EXCLUSIVE* unless it be shown that a cause of action was founded upon the use of those ships either directly in or as an incidental part of or as in contact with interstate and foreign commerce.

Lacking the interstate and foreign character of either commerce or business, then the local law might apply concurrently without disturbing the harmony or interfering with the uniformity of the maritime law in its interstate and international relations.

We do not deny that the jurisdiction of the admiralty courts extends to navigable waters, whether wholly intrastate or otherwise, if connected to the open sea, thereby serving as a channel over

which interstate and foreign commerce may be carried, but we do not concede that such jurisdiction is exclusive in all kinds of cases arising thereon. In matters of local concern and lacking interstate and foreign character, and particularly cases arising therefrom, the jurisdiction of the admiralty courts is not exclusive, as was decided by this court in the *Rohde* case, *supra*, with its subsequent line of decisions. On cases arising out of the navigation of vessels, such as collision, etc., the admiralty jurisdiction might be exclusive.

POINT 3

THESE VESSELS NEVER

1. WENT TO ANY OTHER PORT;
2. LEFT SANTA MONICA BAY;
3. LEFT THE BOUNDARIES OF THE STATE OF CALIFORNIA.

In the first paragraph of page 24 of Appellant's brief, Appellant says:

> "* * * These voyages over three miles out were all beyond the territorial jurisdiction of the State of California," citing
>
> "California Constitution, Article XXI, Section 1,"

and then counsel refers to Appendix to his brief, quoting Article XXI, Section 1 of the Constitution of the State of California (page 35 of the brief).

Counsel apparently overlooked the effect of the last sentence of that section which defines the boun-

daries of the State of California, for in that last sentence we find this language:

> "also, including all the islands, harbors, and *bays along* and adjacent to *the coast.*" (Italics ours.)

Santa Monica Bay is, therefore, included within the boundaries of the State of California according to the description by Clifford A. Morris (R. 43). Captain Morris fixes the line drawn between Point Firmin and Point Duma as the outside line of Santa Monica Bay and this line is "ten miles approximately, from the Santa Monica Pier." Captain Morris also said, "but they never run outside."

Counsel's quotation of Section 1 of Article XXI of the California constitution refutes his argument that these vessels ever left the territorial jurisdiction of the State of California.

The weakness of the maritime character of these boats is demonstrated by appellant's statement that Brooke "at times * * * had actual charge of a boat." Brooke was not a licensed skipper. He was not even twenty-one years of age. A license had been refused him. Yet he is permitted to have "actual charge" of a boat. These vessels, in effect, were nothing but OVERSIZED ROW BOATS used for fishing.

We can not feel that this was a maritime business which lay within the *exclusive* jurisdiction of the admiralty courts, whose assertion of exclusive jurisdiction was essential to preserve the harmony and

uniformity of the maritime law or of any of its essential characteristics.

Point 4

As one of the "facts and circumstances" of this case, it is again pointed out to this court that Brooke was not a member of the crew of the "W.K." at the time of his injury; that the "W.K." was deserted at the time of Brooke's drowning and death. These facts are not decisive of the issue presented in the case at bar, but are pointed out to this court merely as a part of the whole, i.e., all the facts and circumstances of this case.

As pointed out in our Argument hereinabove, the fact that Brooke met his death on navigable waters, i.e., locality, is not alone decisive to indicate and fix the *exclusive* jurisdiction of the federal courts.

Point 5

Appellant states "A state compensation act can not be made applicable to an accident in which the employee was a seaman or apprentice navigator, without affecting or impinging upon the admiralty jurisdiction to an extent heretofore never permitted by this court. A seaman's injury or death on navigable waters can never be a local matter within the local jurisdiction."

The answer to this statement is found in the opinion of this court in *Alaska Packers Assn.* vs. *Industrial Acc. Com.*, 48 Sup. Ct. 346. In that case, Peter-

son was a seaman or fisherman under his contract of employment. Yet the work that he was engaged in at the time of his injury was of such a local character that the provisions of the Compensation Act were permitted to apply by this court as not affecting or impinging upon the admiralty jurisdiction.

The case of *S. S. Bowdoin Co.* vs. *Industrial Acc. Com.*, 246 U. S. 648 (a California case) is not decisive, for in that case the injured man, Sievers, was a member of the crew of a vessel engaged in interstate trade, thus distinguishing it from the facts in the case at bar. The contrast between that case and the case at bar marks the difference between the application of the rule of the *Jensen* case and the application of the rule in the *Rohde* case.

In a recent decision, *a seaman* was held entitled to the benefits of the Compensation Act even though killed on navigable waters. In

S. S. Catala vs. *Dagsland*, (B. C. D. 928) 3 D. L. R. 334,

the deceased employee was working on a fishing boat. In a collision of the "S. S. Catala" the employee was killed. The Exchequer Court of Canada held there was no jurisdiction in such court on its admiralty side to entertain an action for damages for loss of life. Any right of action for damages under the circumstances could only be maintained by virtue of the Workmen's Compensation Act of British Columbia.

RIGHTS and REMEDIES have a definite distinction. The law confers *rights*. The maritime law confers one class of rights. The Workmen's Compensation Act of California confers another class of rights. We emphasize, the *rights* conferred by these two separate laws are DISTINCT each from the other.

REMEDIES are necessary to the enforcement of rights. In enforcement, the remedy lies through a *cause of action or case*. The admiralty courts have jurisdiction of *cases* wherein the rights conferred by the maritime law are to be enforced. The REMEDY for a maritime right lies in the admiralty courts' jurisdiction. The state courts, on the contrary, have jurisdiction only over cases wherein the enforcement of rights conferred by the state statutes (Workmen's Compensation Act) is sought.

The *remedy* for rights given by the State Compensation Act can only be sought through that quasi-judicial body, the Industrial Accident Commission of the State of California, appellee herein.

Summed up, the *rights* of the maritime law and of the State Compensation Act are not in conflict, even though pertaining to and conferred upon a *seaman*. Likewise, the *remedies* on the facts found in the case at bar, pursued by a seaman before the Industrial Accident Commission, appellee herein, does not violate the exclusive jurisdiction of the admiralty courts.

The right enforced by the state courts in the case at bar was an award for FUNERAL EXPENSES in the sum of $150. The maritime law grants no

such right either to seamen, to dependents of seamen, or to other persons providing to deceased seamen that service. The admiralty courts have no jurisdiction to enforce that or any such right.

VI

CONCLUSION

There has been no violation of or impinging upon the EXCLUSIVE jurisdiction of the Admiralty courts by either the application of the Compensation Act of the State of California or the decision of the Supreme Court of the State of California under the circumstances and facts found in the case at bar.

There being no taint of interstate or foreign commerce, no port to port transportation or navigation, no hooking to the end of any interstate carrier in the little, local, concession, pleasure business carried on by the Morris Pleasure Fishing, Inc., at Santa Monica, California, confined entirely to the use of the waters of Santa Monica Bay, the rule of the *Rohde* case controls, there being no

1. contravening of the essential purpose expressed by any act of Congress, or
2. working of material prejudice to the characteristic or any characteristic features of the general maritime law in its interstate or international relations, or
3. interfering with the proper harmony and uniformity of that law in its international and interstate relations.

On the contrary, the case is that of a casualty, maritime in character only because it occurs on navigable waters and occurs to a seaman engaged in domestic or local commerce of limited extent and, therefore, constitutes a matter "of a local signifi-

cance" which "may still be governed by the State Compensation Act."

The regulation of the rights and liabilities of the parties to this controversy by the State Compensation Act and adjudication of those rights and liabilities, clearly not maritime in character, does not constitute that kind of a case which lies within the *exclusive* jurisdiction of the Admiralty courts.

Respectfully submitted that the decision of the Supreme Court of the State of California should be affirmed.

G. C. FAULKNER,
Attorney for Appellee, Industrial Accident Commission of the State of California.

APPENDIX "A"

Admiralty and Admiralty Courts Defined

"What is Admiralty? It is the law, not of the water, but of the seas."

The Robert W. Parsons, 191 U. S. 48.

"The dominion of the Admiralty was over the sea—the ships and the men who frequented it—their contracts and their torts."

Ward vs. *Chamberlain*, 2 Black 446.

"It" (Admiralty) "grew up out of the fact that the ocean is not the territorial property of any nation, but the common property of all; that the vessels engaged in *commerce between the different nations* ought, so far as possible, to be subject to a uniform law, and not annoyed by the conflicting local laws and customs of the several nations which they visit." (Italics ours.)

The Robert W. Parsons, 191 U. S. 48.

"The Admiralty and maritime jurisdiction, like the common law or chancery jurisdiction, embraces a system of procedure known and established for ages. *It may be called a system of regulations* embodied and matured *by the* most enlightened and *commercial nations of the world.*" (Italics ours.)

Jackson vs. *The Steamboat Magnolia*, 20 Howard 303.

"The exclusive jurisdiction in Admiralty cases was conferred on the national government as closely connected with the grant of the commercial power. It is a court instituted for the purpose of administering the law of the seas. There

seems to be ground, therefore, for restraining its jurisdiction, in some measure, within the limit of the granting of the commercial power, which would confine it, *in cases of contracts,* to those concerning the navigation and trade of the country upon the high seas and tide waters *within foreign countries and among the several states.*" (Italics ours.)

New Jersey Steam Nav. Co. vs. *Merchants Bank,* 6 Howard 392.

"The best guides as to the extent of the admiralty jurisdiction of the federal courts are the constitution of the United States, the laws of Congress, and the decisions of this court."

The Belfast, 7 Wall. 636.

MARITIME

There is a definite distinction between the word "maritime" and the word "marine" though both are used freely in matters pertaining to the sea.

"The same transaction may be maritime in one case and not maritime in another."

Hughes on Admiralty, (2d ed.) page 22.

Maritime law is defined.

"* * * The law of nations and the law of maritime commerce, the maritime law * * * in no manner and a uniform administration of that great branch of the law of nations, known as the general maritime law, be secured except by the transfer of all the cases of admiralty and martime jurisdiction to the congnizance of the national judiciary and by committing to Congress the

authority to make all laws necessary and proper to carry into execution the power so vested, as by altering and amending the maritime law under which such cases are adjudged. * * * State legislation, * * * is not framed to display the characteristic features of the maritime law or to impair that uniformity which in international and interstate relations the constitution designed to establish in conferring the maritime power upon the United States."

(*Benedict on Admiralty*, Vol. 1, page 13.)

"'Maritime' means pertaining to the sea or ocean, or the navigation thereof; or to commerce conducted by navigation of the sea or (in America) of the Great Lakes and rivers."

Black Law Dictionary.

"It is not easy to get an exact definition of the term 'maritime contract.' It is far easier to say what is not a maritime contract * * *."

Doolittle vs. *Gnobelach*, 39 Fed. 40.

"The contract for constructing 'The Ahala' was nonmaritime, and although the incompleted structure upon which the accident occurred was lying in navigable waters, neither Rohde's general employment, nor his activities at the time had any direct relation to navigation or commerce. *Thames Towboat Co.* vs. *The Schooner 'Francis McDonald,'* 254 U. S. 242."

Grant Smith-Porter Co. vs. *Rohde*, 257 U. S. 469.

The word "maritime" has never been clearly and succinctly defined. Its use is somewhat hazy (and

nebulous). We do find in the opinions of the courts the words "essentially" and "wholly" and "entirely" as a prefix to the word "maritime" and descriptive of the degree to which, services, employments, contracts or torts and like matters may be "maritime," and where such words are used, invariably the case is one where the trade, commerce, or transportation involved is interstate or foreign. On the contrary, where the trade, commerce or transportation are "local" or "intrastate" or "domestic," the court holds, the services or liens or contracts or torts and like matters to be "nonmaritime" or so little "maritime" in character as to not be within the "exclusive" admiralty jurisdiction.

> "To give the court jurisdiction over a contract as "maritime" it must relate to the trade or business of the sea, or must be *essentially* maritime in its character."
>
> *The Mary F. Chisholm*, 129 Fed. 814, 817.

COMMERCE (AND NAVIGATION)

Commerce embraces and includes navigation:

> "It is well-settled law that the word 'commerce' as used in the constitution comprehends navigation, which extends to every species of commercial intercourse between the United States and foreign nations, and to all commerce in the several states, except such as is completely internal, and which does not extend to or affect the other states."
>
> *Hall* vs. *DeCuir*, 95 U. S. 491.

> "It is well-settled law that the word commerce, as used in the constitution, comprehends naviga-

tion and that it extends to every species of commercial intercourse between the United States and foreign nations and to all commerce in the several states, except such as is completely internal and which does not extend to or affect other states."

State Tonnage Tax Cases, 12 Wall. 214.

See also

Gilman vs. *Philadelphia,* 3 Wall. 724.

"If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen."

Gibbons vs. *Ogden,* 9 Wheat. 190.

What is commerce:

"Transporting commodities is commerce, * * * Both trade and commerce are included so long as each relates to that which is interstate or foreign."

U. S. vs. *Trans-Missouri Freight Assoc.,* 166 U. S. 325.

"Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

Gibbons vs. *Ogden,* 9 Wheat. 190.

" 'Commerce among the states,' as defined by this court, is 'trade,' 'traffic,' 'intercourse,' and

dealing in articles of commerce between states, by its citizens or others, and carried on in more than one state."

Groves vs. *Slaughter*, 15 Pet. 511.

See also

Lottery Case, 188 U. S. 352.

Commerce divided into two classes. 1. Interstate or foreign. 2. Local or intrastate or domestic. They are distinguished thus:

"Commerce with foreign nations must signify commerce which in some sense is necessarily connected with these nations, transactions which either immediately, or at some stage of their progress, must be extraterritorial. The phrase can never be applied to transactions wholly internal, between citizens of the same community, or to a polity and laws whose ends and purposes and operations are restricted to the territory and soil and jurisdiction of such community."

Veazie vs. *Moor*, 14 How. 573.

"There is a trade among the several states which is distinct from that carried on within the territorial limits of a state. The regulation and control of the former is committed by the national constitution to congress."

U. S. vs. *E. C. Knight Co.*, 156 U. S. 32.

"It has been repeatedly held that there is a commerce entirely within a state, among its own citizens, which congress has no power to regulate."

Stoutenburgh vs. *Hennick*, 129 U. S. 150.

"The power of congress, however, over the subject does not extend further than the regulation of commerce with foreign nations and among the several states. Beyond these limits the states have not surrendered their power over the subject, and may exercise it independently of any control or interference of the general government."

Sinnot vs. *Davenport*, 22 How. 243.

"The power given to congress to regulate commerce with foreign nations, and among the states, has been deemed exclusive, from the nature and objects of the power, and the necessary implications growing out of its exercise."

New York vs. *Miln*, 11 Pet. 158.

See also

Groves vs. *Slaughter*, 15 Pet. 505;
Maine vs. *Grand Trunk R. R. Co.*, 142 U. S 233;
Hall vs. *DeCuir*, 95 U. S. 487;
Hennington vs. *Georgia*, 163 U. S. 318.

Purpose of commerce clauses of constitution:

"The commerce clauses of the constitution had their origin in a wise and salutary policy. They give to congress the entire control of the foreign and interstate commerce of the country. They were intended to secure harmony and uniformity in the regulations by which they should be governed. Wherever such commerce goes, the power of the nation accompanies it, ready and competent, as far as possible, to promote its prosperity and redress the wrongs and evils to which it may be subjected."

Inman Steamship Co. vs. *Tinker*, 94 U. S. 245.

"The doctrine now firmly established is, that where the subject upon which congress can act under its commercial power is *local* in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers, and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the state can act until congress interferes and supersedes its authority; but where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the states, such as transportation between the states, including the importation of goods from one state into another, congress can alone act upon it and provide the needed regulations."

Bowman vs. *Chicago, Etc., R. Co.*, 125 U. S. 507.

Local, or internal, or domestic, or intrastate commerce:

"The states have as full control over their purely internal commerce as congress has over commerce among the several states and with foreign nations."

Mobile County vs. *Kimball*, 102 U. S. 699.

"The internal commerce of a state—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the general government."

Sands vs. *Manistee River Imp. Co.*, 123 U. S. 295.

"All commercial action within the limits of a state, and which does not extend to any other state or foreign country, is exclusively under state legislation. Congress has no more power to control this than a state has to regulate commerce 'with foreign nations and among the several states'."

Passenger Cases, 7 How. 400.

"'Comprehensive,' says Mr. Chief Justice Marshall, 'as the word "among" is, it may be very properly restricted to that commerce which concerns more states than one,' and 'the completely internal commerce of a state, then, may be considered as reserved for the state itself.'"

Newport, Etc., Bridge Co. vs. *U. S.*, 105 U. S. 492.

"(Congress) has nothing to do with the purely internal commerce as is carried on between different parts of the same state, if its operations are confined exclusively to the jurisdiction and territory of that state, and do not affect other nations or states or the Indian tribes."

Lord vs. *Goodall, Etc., Steamship Co.*, 102 U. S. 543.

"Business done within this state can not be made to mean business done between that state and other states."

Pacific Express Co. vs. *Seibert*, 142 U. S. 350.

See also

Pensacola Tel. Co. vs. *West, Etc., Tel. Co.*, 96 U. S. 22;
State Freight Tax Case, 15 Wall. 277;
Passenger Cases, 7 How. 399.

State police laws valid:

"The power of congress to regulate commerce is undoubtedly a beneficent one. The police laws of the state are equally so, and it is our duty to harmonize them."

Cook vs. *Marshall County*, 196 U. S. 273.

"The reserved power of the states to guard the health, morals, and safety of their people is more vital to the existence of society than their power in respect to trade and commerce having no possible connection with those subjects."

Bowman vs. *Chicago, Etc., R. Co.*, 125 U. S. 524.

"A state regulates its own internal commerce, may pass inspection and police laws, designed to guard the health and protect the rights of its citizens."

Groves vs. *Slaughter*, 15 Pet. 505.

"It is well settled that the state may make valid enactments in the exercise of its legislative power to promote the welfare and convenience of its citizens, although in their operation they may have an effect upon interstate traffic."

Pennsylvania R. Co. vs. *Hughes*, 191 U. S. 488.

"That which belongs to commerce is within the jurisdiction of the United States, but that which

does not belong to commerce is within the jurisdiction of the police power of the state."

U. S. vs. *E. C. Knight Co.*, 156 U. S. 12.

Insurance is not commerce:

"The contention here is that, inasmuch as the contract was one for marine insurance, it was a matter of interstate commerce, and as such beyond the reach of state authority.

* * * This proposition involves an erroneous conception of what constitutes interstate commerce. That the business of insurance does not generally appertain to such commerce has been settled since the case of *Paul* vs. *Virginia*, 8 Wall. 168."

Hooper vs. *California*, 155 U. S. 653.

"If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states; and would exclude state control over many contracts purely domestic in their nature."

Hooper vs. *California*, 155 U. S. 655.

"Where the power of congress to regulate is *exclusive* the failure of congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the states, except in matters of *local concern* only, as hereafter mentioned, is repugnant to such freedom."

Robbins vs. *Shelby Taxing Dist.*, 120 U. S. 493.

Regulation of commerce embraces ships and seamen:

"The power of congress to require vessels to be enrolled and licensed is derived from the provision of the constitution which authorized it 'to regulate commerce with foreign nations and among the several states'."

Wiggins Ferry Co. vs. *East St. Louis*, 107 U. S. 377.

"If congress license vessels to sail from one port to another, in the same state, the act is supposed to be necessarily incidental to the power expressly granted to congress, and implies no claim of a direct power to regulate the purely internal commerce of a state, or to act directly on its system of police."

Gibbons vs. *Ogden*, 9 Wheat. 204.

"Unquestionably the power to regulate commerce includes navigation as well as traffic in its ordinary signification, and embraces ships and vessels as the instruments of intercourse and trade as well as the officers and seamen employed in their navigation."

State Tonnage Tax Cases, 12 Wall. 216.

"Repeated decisions of this court have determined that the power to regulate commerce embraces all the instruments by which such commerce may be conducted; and it is settled law that where the subject to which the power applies is national in its character, or of such a nature as

to admit of uniformity of regulation, the power is exclusive of all state authority."

Hall vs. *DeCuir*, 95 U. S. 497.

See also

License Cases, 5 How. 578.